

<b>To:</b>	Board		
<b>Date of Meeting:</b>	27 January 2011	<b>Item:</b>	Paper (11) 04

<b>Title:</b>	Rationalising the scope of regulation		
<b>Workstream(s):</b>	Workstream(s) 3E: Improving access to justice – rationalising the scope of reservation		
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<b>Status:</b>	Protect		

<b>Summary:</b>
<p>This paper is designed to provide the Board with a workstream update. The Executive will ask the Board to consider and approve proposals for wider discussion at the meeting on 28 March. In the meantime, as this area is broad and the issues at play are both complex and at the heart of the Board's future strategy, the Executive will be happy to facilitate a workshop with Board Members in February.</p> <p>The following are annexed to the paper:</p> <ul style="list-style-type: none"> <li>• a fuller Executive paper on the scope of regulation, setting out further detail about: the background to the current framework, responsibilities and opportunities for LSB review, problems that need addressing, the development of a framework for making regulatory decisions and possible ways in which it may be used (<b>Annex 1</b>)</li> <li>• the final Decker and Yarrow report: "Understanding the economic rationale for legal services regulation" (<b>Annex 2</b>).</li> </ul>

<b>Risks and mitigations</b>	
<b>Financial:</b>	Low.
<b>FoIA:</b>	Para 14 – exempt <b>s36(2)(b)</b> Annex 1 – exempt <b>s36(2)(b)</b>
<b>Legal:</b>	Low, but legal framing of vires important.
<b>Reputational:</b>	High.
<b>Resource:</b>	Medium – Can be managed within existing resource

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	
<b>Consumer Panel:</b>	✓		Consumer Panel Manager has been kept updated

<b>Recommendation(s):</b>
<p>The Board is invited:</p> <ol style="list-style-type: none"> <li>(1) to note and to comment on the update;</li> <li>(2) to indicate whether a workshop should be hosted in February to examine the public policy approach to regulation; and</li> <li>(3) to note next steps, including a high-level discussion document around the time of the final Business Plan 2011/12, which will be presented to the Board on 28 March 2011.</li> </ol>

## LEGAL SERVICES BOARD

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### Rationalising the scope of regulation

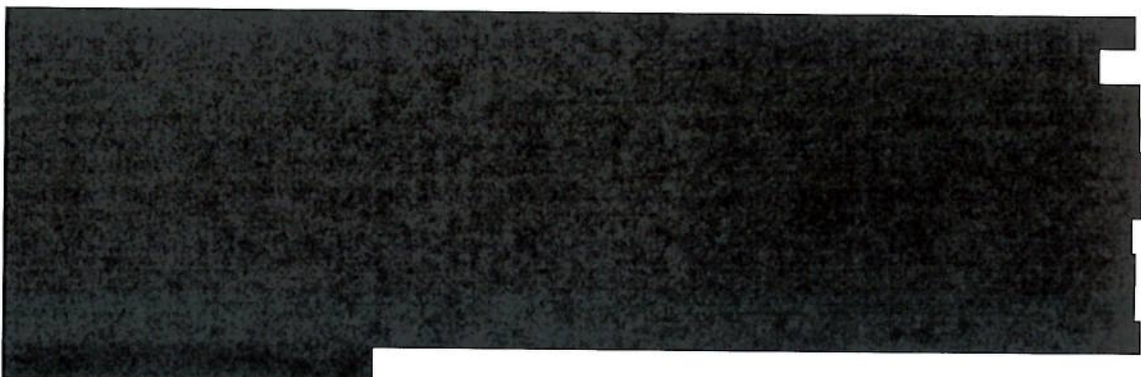
#### Background

1. The scope of regulation has been on the Board's agenda for some time. The 2010/11 Business Plan set out the Board's intention to consider whether the current scope of regulation provided the appropriate balance between consumer protection and the additional costs of regulation. It also set out the Board's intention to identify criteria for determining whether an area of advice should be regulated. The commitments were made in response to an application to make will-writing a reserved legal activity.
2. At its strategy session in September 2010, the Board began to discuss in more detail issues around regulatory scope. There was discussion around problems with the current landscape and the practice of reserving legal activities to lawyers and the gradual cultivation of delivery methods that see services delivered outside of legal services regulation. This was framed by presentations from the Regulatory Policy Institute (Decker and Yarrow) on the economic rationale for regulating legal services and from Opinion Leader on what consumers want from legal services.
3. The Board agreed to the following areas being developed:
  - tests to determine whether specific legal services should be subject to before-the-event regulation
  - tests to determine the circumstances in which reservation to (specific groups of) individual lawyers is the most appropriate form of regulation
  - an initial assessment of how far the current framework of regulation in terms of coverage measures up against those tests and where the gaps are
  - an initial assessment of how the regulatory architecture in terms of the current boundaries between Approved Regulators (**AR**) and the LSB measures up against it
  - an assessment of how far the Legal Services Act 2007 (**the Act**) provides the most appropriate regulatory framework or needs amendment.
4. The draft 2011/12 Business Plan sets out the Board's intentions to examine regulation and reservation and proposes: "a rational and intellectually sustainable framework for assessing whether and where regulation is required", one aim being to ensure that "regulation becomes more targeted at addressing consumer detriment, whilst remaining proportionate to problems identified in the market".
5. A range of stakeholders have expressed strong interest in this work: For example:
  - the Legal Ombudsman in relation to combating jurisdictional uncertainty that has been encountered in the first months of operation
  - partners in the ARs, most notably the Solicitors Regulatory Authority (**SRA**) in their consideration of their restrictions around separate unregulated businesses
  - legal commentators who have been writing regularly on the need to review the current environment, especially since Professor Mayson's research showed that there is little rationale behind the current reserved activities


- leading legal and regulatory academics, many of whom have agreed to write essays based around the findings of the Decker and Yarrow research
- the Office of Fair Trading which supports action to rationalise regulations acting as a barrier to entry and has promoted our important role in this to the Department of Business, Innovation and Skills Growth team
- providers who believe that there is not currently a level playing field either because they are subject to regulation whilst competing against providers who are not, or conversely from potential new entrants who feel there are unfair barriers to the regulated brand
- there has been some press interest, although the subject remains arcane to many.

### **Forthcoming issues**

6. There are a number of issues that the Board will have to consider over the next twelve months that raise questions about the scope and nature of regulation.

7. 

8. 

9. 

10. 

## Options

11. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

## Where we are at

15. We have recently received the final Decker and Yarrow economics report. The paper highlights how economics divides public policy concerns into issues of efficiency and equity. The Opinion Leader final research report is due to be submitted to the LSB at the end of January. A range of consumers have been asked what they expect from their interaction from legal services, where this is being achieved and where it is not. A set of outcomes expressed as behaviours will be produced by this research.

16. [REDACTED]

[Redacted]

17. [Redacted]

**Conclusion**

18. [Redacted]

19. [Redacted]

20. The proposals are therefore offered for Board comment at this stage for “second reading debate” and for a steer to the Executive on particular areas to be developed and explored further.